



ADVISORY OPINION 07-11

Interpretation of T.C.A. § 3-6-305,
with respect to state officials soliciting
contributions from employers of lobbyists.

INTRODUCTION

The following Advisory Opinion is in response to a written inquiry from Ms. Mary Margaret Collier, Director of the Bond Finance Division of the State of Tennessee Comptroller's Office, as to whether the Tennessee Government Finance Officers Association ("TGFOA") may, under the Comprehensive Governmental Ethics Reform Act of 2006 ("the Act"), solicit contributions from various service providers and vendors for sponsorships of events.

Ms. Collier asks the following questions:

- (1) Does the Act permit TGFOA to solicit door prizes or cash contributions for sponsorship of an event? Does the analysis change if the state employee is acting on behalf of an organization that is an unincorporated affiliate of an incorporated organization with membership from both the public and private sectors?
- (2) Does the Act permit the solicitation of a member of an organization that employs a lobbyist?
- (3) Does the Act restrict TGFOA's actions with cities or counties that have registered lobbyists? Does it matter if the lobbyist is hired by a board, commission or agency of the city or county?
- (4) Are contributions from law firms who provide lobbying services treated as gifts under the Act?

In response to the above questions, the Tennessee Ethics Commission ("Commission") concludes:

- (1) The TGFOA is a professional organization for government officials, and thus membership therein is not distinguishable from the member's status as a government employee. Accordingly, those members of the TGFOA who are state officials may not solicit gifts or contributions from lobbyists or employers of lobbyists, and may not choose the businesses that TGFOA will solicit. This analysis will not change based upon the fact that an organization is unincorporated. Instead, additional information regarding the membership of such an organization is required in order to determine if the state official's employment and membership activities are distinguishable for the purposes of applying the Act.
- (2) See Tennessee Ethics Commission Advisory Opinion 07-01 for a detailed analysis of the application of the gift ban to affiliate members of organizations that employ lobbyists.
- (3) The TGFOA is not affected by counties or cities that employ registered lobbyists because government entities are not considered to be "employers of lobbyists" for the purposes of the gift ban and are therefore permitted to donate door prizes or make other contributions. However, state employee members of

TGFOA are prohibited from soliciting or accepting donations from any third-party lobbyists employed by such government entities.

(4) The law firm does not meet the definition of either an “employer of a lobbyist” or a “lobbyist” for the purposes of the gift ban, and thus there are no restrictions on soliciting contributions from such a firm.

BACKGROUND

Collier is the Director of Bond Finance in the State of Tennessee’s Comptroller’s Office and incoming president of the TGFOA. She states that its membership includes employees of state and local governments. From time to time, the TGFOA solicits contributions from various service providers and vendors for the sponsorship of events. This year, the TGFOA intends to seek sponsorships for training events, golf tournaments and a networking event.

DISCUSSION

A. SOLICITATION OF GIFTS AND CASH CONTRIBUTIONS FOR EVENT SPONORSHIP BY AN INCORPORATED ORGANIZATION

Can TGFOA members solicit door prizes or cash contributions for sponsorship of an event? Does the analysis change if the organization is an unincorporated affiliate of an incorporated organization with members from both the public and private sector?

T.C.A. § 3-6-305(a)(2) provides that state officials may not solicit or accept, directly or indirectly, a gift from an employer of a lobbyist or a lobbyist, unless an exception applies.

According to the facts provided, TGFOA, whose membership is comprised of state and local government officials, wants to solicit contributions from various service providers and vendors for the sponsorship of events. T.C.A. § 3-6-305 does not restrict solicitations by *local* government officials, but the statute prohibits *state* officials from soliciting lobbyists or businesses which are employers of lobbyists.

State officials are often members of, or volunteers for, non-profit organizations and professional associations, and in that capacity may solicit contributions, depending upon the organization or association. An organization such as the TGFOA, however, is an established and recognized professional organization primarily for local and state government employees. Accordingly, it is difficult, if not impossible, for the state official, acting on behalf of TGFOA, to be seen as performing a role separate from his or her status as a state employee when soliciting contributions from employers of lobbyists.

Regarding unincorporated affiliates, the analysis will not change based solely upon whether the organization is incorporated or unincorporated. Instead, additional information regarding the membership of such an organization would be necessary to determine whether a member’s actions on behalf of the organization are distinguishable from his or her role as a state official.

Regarding the TGFOA, those members who are state officials are prohibited from directly soliciting businesses and organizations that are employers of lobbyists. In addition, any committee organized by the TGFOA for the purposes of soliciting businesses should not include members who are state officials in order to prevent such state employees from being in the position to choose businesses for solicitation. Thus,

pursuant to T.C.A. § 3-6-305(a)(2), TGFOA members may solicit contributions or gifts from vendors and service providers to sponsor events, provided that state officials do not solicit contributions from employers of lobbyists, and members of any committee organized by the TGFOA to perform fundraising should be comprised of non-state officials.

B. SOLICITATION OF GIFTS AND CASH CONTRIBUTIONS BY A MEMBER OF AN ORGANIZATIONS THAT EMPLOYS A LOBBYIST

Does the Act permit the solicitation of a member of an organization that employs a lobbyist?

See Tennessee Ethics Commission Advisory Opinion 07-01 for a detailed analysis of affiliate members. In general, the gift ban does not apply to affiliate members of organizations that are employers of lobbyists.

C. GIFTS OR CASH CONTRIBUTIONS MADE BY CITIES OR COUNTIES WHO EMPLOY A LOBBYIST

Does the Act restrict TGFOA's actions with cities or counties that have registered lobbyists? Does it matter if the lobbyist is hired by a board, commission or agency of the city or county?

T.C.A. §3-6-301(15)(D) states: "Lobby" does not mean communications by an employee of a school board, municipal utility, utility district, or any department, agency, or entity of state, county or municipal government; provided, however, that, if the board, utility, district, department, agency or entity employs, retains or otherwise arranges for lobbyist services in this state by a contractor, subcontractor or their representative who is not an employee of such board, utility, district, department, agency or entity, then "lobby" includes communications by the contractor, subcontractor or other representative shall comply with the lobbying registration and other provisions of this part pertaining to lobbyists; provided further, however, that the board, utility, district, department, agency or entity that employs the contractor, subcontractor or other representative is not deemed to be an employer of a lobbyist for purposes of this part.

Counties and cities, and any political subdivision of county or city government, are not considered to be employers of lobbyists. Therefore, such government entities are permitted to donate door prizes or make other contributions to the TGFOA. However, in the event that the city or county employs a third-party lobbyist rather than an in-house lobbyist, the gift ban is applicable to that third-party lobbyist. Thus, state employee members of TGFOA may solicit donations or contributions from local governmental entities and subdivisions thereof, but may not solicit the individual third-party lobbyists for such governmental entities.

D. CONTRIBUTIONS BY LAW FIRMS WHO PROVIDE LOBBYING SERVICES

Are contributions from law firms who provide lobbying services treated as gifts under the Act?

T.C.A. §§ 3-6-304 through 305 prohibit state officials from soliciting or accepting gifts provided by lobbyists and employers of lobbyists. Regarding the law firm referenced in the question, sufficient facts are not provided to determine whether the firm would be considered a "lobbying firm" as defined by T.C.A. § 3-

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6-301(16)¹. However, regardless of whether the law firm is a “lobbying firm”, under the definition of an “employer of a lobbyist” contained in T.C.A. 3-6-301(8), a lobbying firm is not deemed to be the employer of any lobbyist within the firm and is therefore not subject to the gift ban. In addition, the definition of an employer of a lobbyist provides that an employer is any person or entity that employs, retains or otherwise arranges for a lobbyist to engage in lobbying *on behalf of the person or entity* for compensation. Presumably, under the question posed, the lobbyists within the firm do not lobby on behalf of the law firm, but instead lobby for individual clients. Accordingly, the law firm itself is not the employer of the lobbyist – the individual client who has hired the attorney to lobby on its behalf is the employer against whom the gift prohibitions apply.

Regarding whether the law firm could be considered to be a “lobbyist”, T.C.A. § 3-6-301(17) defines a lobbyist as any *person* who engages in lobbying for compensation. Accordingly, the law firm itself is not deemed to be a lobbyist.

Thus, the law firm referenced in the question is not considered to be either an “employer of a lobbyist” or a “lobbyist” under the statute and state officials are not prohibited by T.C.A. §§ 3-6-304 through 305 from soliciting or accepting donations from such firms. However, state officials may not solicit individual lawyers within the firm who are registered lobbyists.

Thomas J. Garland,
Chair

R. Larry Brown
Donald J. Hall
Linda Whitlow Knight, Esq.
Dianne Ferrell Neal
Benjamin S. Purser, Jr.,
Commissioners

Date: September 27, 2007

¹ T.C.A. § 3-6-301(16) defines a “lobbying firm” as “any firm, corporation, partnership or other business entity that regularly supplies lobbying services to others for compensation”.